



The Commonwealth of Massachusetts
The Alcoholic Beverages Control Commission

Leverett Saltonstall Building, Government Center
100 Cambridge Street, Boston 02202

TELEPHONE: 727-3040

ANNUAL REPORT

Fiscal Year 1989

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George R. McCarthy, Chairman
Eunice P. Howe, Associate Commissioner
Daniel P. Matthews, Associate Commissioner
Peter J. Connelly, Executive Secretary

June 30, 1989

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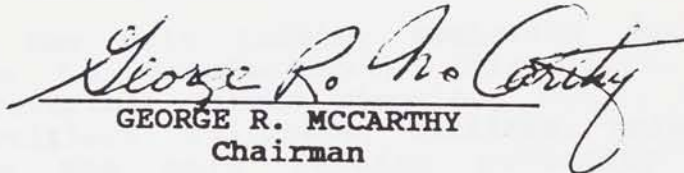
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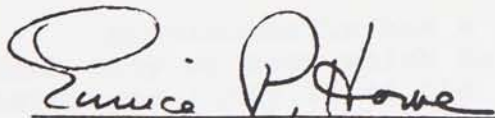
TELEPHONE: 727-3040


MEMORANDUM

TO: Secretary Paula Gold
FROM: George R. McCarthy
SUBJECT: Annual Report

Herewith delivered is the Alcoholic Beverages Control Commission's Annual Report for the Fiscal Year ending June 30, 1989.


GEORGE R. MCCARTHY
Chairman


EUNICE P. HOWE
Associate Commissioner


DANIEL P. MATTHEWS
Associate Commissioner

ABCC DUTIES AND FUNCTIONS

In accordance with the provisions of Massachusetts General Laws, Chapter 6, Section 44, the Alcoholic Beverages Control Commission files herewith the report of its action and of the conduct and condition of traffic in alcoholic beverages in the Commonwealth for the Fiscal Year ending June 30, 1989.

The Alcoholic Beverages Control Commission (hereinafter referred to as the Commission or ABCC) was created in 1933 by M.G.L. C.6, s43. The Commission has the general supervision of the conduct of the business of manufacturing, importing, exporting, storing, transporting and selling alcoholic beverages. Further, it supervises the quality, purity and alcoholic content thereof by virtue of M.G.L. C.6, s44. The Commission is comprised of a Chairman and two Associate Commissioners. The present Chairman is George R. McCarthy and the Associate Commissioners are Eunice P. Howe and Daniel P. Matthews.

The Commission sets policy and standards and advises local Licensing Authorities; the Commission sits as a quasi-judicial body, hearing appeals from local boards, protests and violations of the Liquor Control Act (Chapter 138) and conducts public hearings. The Commission also keeps track of Bottle Bill revenues.

The offices of the Commission are located at 100 Cambridge Street, Boston, on the 22nd floor.

ADMINISTRATIVE SECTION

The ABCC is the sole issuing authority for alcoholic beverage licenses to manufacturers (distillers, wineries, brewers, farmer breweries, farmer wineries, etc.), wholesalers and importers, rectifiers, railroads, airlines, ships and ship chandlers. It is the sole issuing authority of liquor transportation permits for express or trucking companies, ships, railroads, airlines and liquor retailers. It licenses salespersons employed by manufacturers, wholesalers and importers.

Massachusetts has a two-tiered system for liquor licensing. Each city or town which has voted to permit the sale of alcoholic beverages (only 21 of the state's 351 cities and towns are "dry") has its own Licensing Board, Commission or Licensing Authority. These local boards or commissions are the sole licensing authorities for hotels, restaurants, clubs and package stores within their communities. While the local licensing authorities do the actual issuing, the license must be approved by the ABCC.

During Fiscal year 1989, the Commission issued approximately 14,000 permits and licenses. In addition, it processed 12,000

renewals and it approved or disapproved approximately 3,000 applications for licenses and license changes (transfers of license or stock, pledges of licenses or stock, changes of managers or officers, etc.) which are forwarded from the local licensing authorities.

Each of these involves a review for compliance with statutes and regulations, cross checking with the Department of Revenue for compliance with the tax laws of the Commonwealth and considerable contact with licensees, applicants, their agents and attorneys and the Local Licensing Authorities.

The Commission has kept track of the revenues from the Bottle Bill since its 1983 inception as well as the money retained by all bottlers and distributors from the unreturned containers.

A significant function of the staff is responding to numerous telephone and written inquiries from local licensing boards, government agencies, licensees, attorneys, applicants and the general public concerning the status of applications, procedures for obtaining licenses and appealing decisions, state and local laws and regulations, price posting regulations, public policy and matters of a technical and general nature.

INVESTIGATORY SECTION

Part of the ABCC is an investigatory staff, members of which are designated as "Special Assistants to the Commission". They are charged with ensuring that those involved in the alcoholic beverage industry comply with Massachusetts law and ABCC rules and regulations. To ensure compliance, they investigate complaints and make frequent on-site visits to, and inspections of, retailer and wholesaler/importer premises. Investigators interview license applicants, investigate their financial status and check their corporate and police records, if any. They are required to visit newly-licensed establishments to assure the premises comply with applicable statutes and codes.

Licensed establishments are inspected whenever complaints are received and on occasional routine inspections. When apparent violations are found, a report is submitted to the Commission, a formal hearing is conducted and the matter is adjudicated. Investigators are required to prepare the evidence and prosecute their cases before the Commission. From time to time, the investigators carry out special orders of the Commission and assist other law enforcement agencies and local licensing authorities.

HEARINGS

During Fiscal Year 1989, the Commission heard 451 cases in its formal hearings (See statistical analysis). Hearings are open

to the public and written decisions are rendered. Decisions are kept on file with the Agency and with the Social Law Library at Suffolk County Courthouse in Boston. They are also reported monthly in the Massachusetts Beverage Journal and The Price Book, and other publications distributed to licensees.

Commission decisions concern matters of public interest and are often reported in the mass media. The Commission encourages wide dissemination of its decisions as this puts licensees on notice that compliance with the laws and regulations is expected. Decisions also furnish guidelines to the industry for compliance.

STATISTICAL ANALYSIS OF HEARINGS

	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
Appeals	135	159	159	112	110
Protests	13	16	4	5	8
Reappeals/Reconsideration	4	2	4	5	1
Violations	157	172	249	253	298
Investigatory Hearings	13	0	3	5	3
Remands from Superior Court	0	1	1	4	3
Disputed Liquor Bills	4	0	0	1	1
Tax Protests	2	0	8	6	0
Public Regulatory Hearings	9	0	0	1	3
Section 25E cases*	13	12	16	16	9
Pre-Trial Conferences	23	19	17	21	15
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TOTALS:	373	381	461	429	451

*25E cases are hearings concerning disputes between suppliers and wholesalers. Previously they were listed under "Violations".

Cases arising under 25E of Chapter 138 have continued to require significant Commission attention. Section 25E provides that where a supplier has made regular sales of a product to a Massachusetts wholesaler over a six month period, the supplier cannot discontinue such sales without good cause. Competitive pressures and increased merger and acquisition activity in the industry have generated a substantial caseload in this area.

The Commission has been faced repeatedly with the question of whether 25E provides a remedy for a wholesaler where its supplier loses or transfers its distribution rights for a product and the new supplier is unwilling to serve the wholesaler.

The Commission has a substantial pending caseload in this area. The Commission has recommended legislation that would clarify the statute.

PUBLIC POLICY

In carrying out its responsibilities, an important function of the ABCC is identifying and implementing policies which protect the safety and interests of consumers and the general public and stabilize the liquor industry in Massachusetts.

The ABCC and its staff have developed and maintained a close working relationship with other governmental units, namely, the Executive Office of Public Safety, the Registry of Motor Vehicles, Governor's Highway Safety Committee, Department of Revenue, the Attorney General's Office and various other law enforcement and administrative agencies. The ABCC advises the Executive and Legislative Branches on matters relating to the liquor industry. The Commission participates in seminars and conferences to bring problems connected with the use and abuse of alcohol to the attention of licensed establishments, their employees and the general public.

The Commission has undertaken a program to invigorate the local licensing authorities by encouraging cities and towns to address their responsibilities in administering and enforcing the liquor laws.

NEW DEVELOPMENTS

The ABCC dealt with the problems created by excessive alcohol consumption aboard ships operating out of Massachusetts ports by conducting public hearings and promulgating regulations which hold ship owners accountable to the same standards as land-based licensees. In effect, the regulations emphasize the responsibility of the ship owner to ascertain that when debarking passengers return to their cars, they will not contribute to alcohol-related highway accidents.

The regulations, effective February 3, 1989, are not aimed at hindering economic activity. Their purpose is to stop promotional activities that encourage excessive drinking and the careless supervision of patrons who become intoxicated and constitute a threat to public safety. They include the following provisions, among others: limits on the hours of serving alcohol and on the number of drinks sold to a passenger at a time; appointment of an approved manager to oversee and supervise the sale of alcoholic beverages; food and non-alcoholic beverages must be available; a secure area must be available for any passenger who appears to be intoxicated; passengers are prohibited from bringing alcoholic beverages aboard; service of alcoholic beverages must cease one half hour before docking on trips of two hours or more.

A key regulation forbids alcoholic beverage manufacturers and suppliers from sponsoring, promoting or using their name or the name of any of their products in connection with ship events.

The ABCC also handed down a decision that banned the sale of so-called "beer balls" or "party balls" in Massachusetts. The Commission found that while these 5.16 gallon containers may be a public convenience if used responsibly, there is also a substantial risk that use of the containers will be abused, particularly by underage consumers in college communities where keg beer has been an ongoing problem. This container originally came to the Commission's attention as a result of promotional material issued by a beer supplier (since withdrawn) which suggested targeting the college market. Overconsumption by users of any age is a concern, since the package contains over five gallons of beer which will spoil unless consumed within twenty-four hours after opening.

The Commission's decision limiting wine tastings to on-premise package stores as stipulated in Chapter 138, Section 15 was upheld twice by the courts. In Cellarmaster Wines of Massachusetts, Inc. vs. Alcoholic Beverages Control Commission, 27 Mass. App. Ct. 25 (1989) the court stated, "The plaintiffs argument that what is not expressly prohibited is allowed is, in this context, fundamentally mistaken. Under its license, the plaintiff could lawfully conduct business only in the manner authorized by G. L. c. 138, Section 15. That authorization does not include off-premise wine tasting."

In Silenus Wines, Inc. vs. Alcoholic Beverages Control Commission, Superior Court Civil Action No. 88-3978, the court ruled, "It is very clear from the language of the statute that Section 12 liquor licenses are granted to a particular person, persons or entity for use at a specific premises. The liquor must be served by the Section 12 licensee and not by a separate party unless specifically authorized by statute."

The Commission's authority to enforce its cover charge regulation (204 CMR 2.16) and to go outside the purview of Chapter 138 to oversee the proper and orderly conduct of a licensed business was upheld in O'L & S, Inc. vs. Alcoholic Beverages Control Commission, Appeals Court No. 88-P-63. The decision said, "Section 24 of c. 138,---confers broad powers upon the Commission to promulgate regulations 'not inconsistent with the provisions' of c. 138, including those 'for the proper and orderly conduct of the licensed business.' Section 64 of c. 138, as amended---empowers licensing authorities---to suspend or revoke a license upon a showing of a violation of 'any law of the Commonwealth.' The Commission may, therefore prescribe by regulation the means to assure compliance with laws of the Commonwealth bearing on licensed places where alcohol is imbibed. That the source of the pertinent law may be outside c. 138 does not strip the commission of authority to regulate compliance, in this case, with the cover charge statute. "

TAX REVENUES

Since 1976, the ABCC has cooperated with the Massachusetts Department of Revenue in assisting in the collection of overdue taxes from licensees who attempt to transfer their licenses or interest in their businesses. Prior to approving such transfers, the Commission requires proof of tax compliance. The tax dollars collected under this program for the last five years are as follows:

Period Ending:

June 30, 1985.....	\$1,824,418.89
June 30, 1986.....	\$1,924,693.75
June 30, 1987.....	\$1,593,980.83
June 30, 1988.....	\$1,442,560.16
June 30, 1989.....	\$1,242,202.66
TOTAL:	\$8,027,856.29

FINES

Under the provisions of M.G.L. c 138, s23, when the ABCC suspends a license, the Commissioners at their discretion, may accept a fine in lieu of such suspension. The monies thus collected by the Commission are paid directly to the Treasurer and Receiver General.

The amount for the last five years is as follows:

Period Ending:

June 30, 1985.....	\$135,286.53
June 30, 1986.....	\$233,543.44
June 30, 1987.....	\$131,624.65
June 30, 1988.....	\$282,427.97
June 30, 1989.....	\$148,642.00
TOTAL:	\$931,524.59

FINANCIAL STATEMENT

Fiscal Year--July 1, 1988 Ending June 30, 1989

	Number of Permits Licenses/Fees Issued	Amount
Fines in Lieu of Suspension	NA	\$148,642
Manufacturer's License--Wineries	3	54
Manufacturer's License--Breweries	2	9,500
Wholesaler's & Importer's All-Alcoholic	58	348,000
Wholesaler's & Importer's Wines & Malt	40	120,000
Wholesaler's & Importer's Sacramental	3	11,000
Certificate of Compliance (\$500)	274	137,000
Certificate of Compliance (\$100)	648	64,950
Special Permits	198	2,519
Commercial Alcohol License	2	1,000
Agents, Brokers & Solicitors	68	135,000
Filing Fees	2,536	90,200
Storage Permit	23	4,000
Storage Permit (Annual)	27	9,400
Storage Permit (Bonded Warehouse)	3	1,200
Salesmen's Permit	1,639	85,274
Transportation Permit--Licensee	2,286	104,773
Transportation Permit--Railroad	0	0
Transportation Permit--Airline	1	600
Transportation Permit--Steamship	0	0
Railroad License--Master	3	900
Railroad License	66	75
Airline License	48	14,530
Steamship License	103	28,200
Express Permit	3,710	123,070
Ship Chandler's License	5	2,500
Miscellaneous Income	N/A	255
		<hr/> \$1,442,642*

*This amount was transferred into the General Fund of the Commonwealth.

STATEMENT OF APPROPRIATIONS AND EXPENDITURES

APPROPRIATIONS:

Personnel Services	\$1,145,206
Expenses	127,963

TOTAL:	<u>\$1,273,169</u>
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EXPENDITURES:

Personnel Services	\$1,139,151
Expenses	125,111
Accounts Payable	6,900

TOTAL:	<u>\$1,271,162</u>
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BALANCE UNEXPENDED:

Returned to Treasurer and Receiver General:	<u>2,007</u>
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